

HOUSE EDUCATION COMMITTEE SUBSTITUTE FOR
HOUSE BILL 1128

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

AN ACT

RELATING TO THE PUBLIC PEACE, HEALTH, SAFETY AND WELFARE;
AUTHORIZING THE ISSUANCE OF STATE PENSION OBLIGATION TAX
REVENUE BONDS FOR THE FUNDING AND REFUNDING OF STATE UNFUNDED
ACCRUED PENSION LIABILITY; CREATING THE STATE PENSION
OBLIGATION BOND RETIREMENT FUND AND THE STATE PENSION
CONTRIBUTION FUND; MAKING APPROPRIATIONS; DECLARING AN
EMERGENCY.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. [NEW MATERIAL] SHORT TITLE.--Sections 1
through 13 of this act may be cited as the "State Pension
Obligation Bonding Act".

Section 2. [NEW MATERIAL] FINDINGS.--The legislature
finds and declares that:

A. the state currently makes contributions on an

1 annual basis to fund the state's obligations under its various
2 retirement systems, consisting, in part, of unfunded accrued
3 liability;

4 B. providing for the funding or refunding of part
5 or all of unfunded accrued liability may reduce the state's
6 costs and better ensure the timely and full payment of
7 retirement benefits to retirement systems' members and their
8 beneficiaries; and

9 C. it is in the public interest to provide for the
10 funding or refunding of any such unfunded accrued liability, in
11 full or in part, through the issuance of bonds, notes or other
12 obligations by the board, and to provide for the payment of the
13 principal of, interest on and redemption premiums, if any, on
14 the bonds with distributions from a special fund composed of
15 gross receipts tax revenues.

16 Section 3. [NEW MATERIAL] DEFINITIONS.--As used in the
17 State Pension Obligation Bonding Act:

18 A. "additional obligation" means the obligation of
19 the state:

20 (1) under any credit enhancement or liquidity
21 agreement, including any obligation in the form of bond
22 insurance, a letter of credit, standby bond purchase agreement,
23 reimbursement agreement, liquidity facility, revolving credit
24 agreement or other similar arrangement;

25 (2) under any remarketing agreement, auction

1 agent agreement, broker-dealer agreement or other agreement
2 relating to the marketing of the bonds, interest-rate or other
3 type of exchange agreement or hedge contract, interest-rate
4 floor or cap, or similar agreements; or

5 (3) under any investment agreement, forward
6 purchase agreement or similar structured investment contract
7 entered into by the board in connection with any bonds issued
8 under the State Pension Obligation Bonding Act;

9 B. "board" means the state board of finance;

10 C. "bond retirement fund" means the state pension
11 obligation bond retirement fund created pursuant to Section 5
12 of the State Pension Obligation Bonding Act, including a
13 capitalized interest account and an interest rate stabilization
14 account;

15 D. "bonds" means bonds, notes or other obligations
16 issued or executed pursuant to the State Pension Obligation
17 Bonding Act;

18 E. "designated retirement system" means, with
19 respect to an issuance of bonds, a retirement system, the
20 unfunded accrued liability of which is being funded with all or
21 any portion of the proceeds of such issuance;

22 F. "pension contribution fund" means the state
23 pension contribution fund created pursuant to Section 9 of the
24 State Pension Obligation Bonding Act;

25 G. "retirement laws" means Article 20, Section 22

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1 of the constitution of New Mexico, the Public Employees
2 Retirement Act, the Educational Retirement Act, the Magistrate
3 Retirement Act, the Judicial Retirement Act, the Volunteer
4 Firefighters Retirement Act and any other laws providing for
5 payment to be made by the state or any state agency to any
6 retirement system to provide retirement benefits to employees
7 of the state or any other individuals for which the state has
8 an obligation to pay all or a portion of the contributions to a
9 retirement system to ensure the payment of retirement benefits
10 to those individuals;

11 H. "retirement system" means the retirement
12 programs or funds provided for in the retirement laws and any
13 other retirement system that provides retirement benefits to
14 employees of the state or any other individuals for which the
15 state has an obligation to pay all or a portion of the
16 contributions to the retirement program or fund to ensure the
17 payment of retirement benefits to those individuals; and

18 I. "unfunded accrued liability" means, with respect
19 to a retirement system of the state or any state agency, the
20 liability imposed by the retirement laws representing pension
21 benefits earned in prior years that are not yet fully funded in
22 accordance with standard actuarial practices or that are based
23 upon the current market value of a retirement system's
24 estimated assets and liabilities using standard actuarial
25 practices as set forth in the most recent actuarial valuation

1 report available for that retirement system.

2 Section 4. [NEW MATERIAL] AUTHORITY TO ISSUE BONDS.--

3 A. The board is authorized to:

4 (1) at any time and from time to time, issue
5 revenue bonds, known as "state pension obligation tax revenue
6 bonds", or execute revenue notes evidencing unfunded accrued
7 liability, known as "state pension obligation tax revenue
8 notes", or other obligations, in any case payable solely from
9 the bond retirement fund or, in the case of bond anticipation
10 notes, payable solely from the proceeds of bonds to be issued
11 pursuant to the State Pension Obligation Bonding Act, in
12 compliance with that act for the purpose of:

13 (a) funding the payment, in full or in
14 part, of unfunded accrued liability;

15 (b) reimbursing the state amounts
16 previously paid with respect to unfunded accrued liability;

17 (c) refunding any bonds previously
18 issued pursuant to the State Pension Obligation Bonding Act;

19 (d) paying related additional costs,
20 issuance costs and administrative costs;

21 (e) entering into additional obligations
22 in connection with bonds anticipated to be issued;

23 (f) making deposits to reserve funds and
24 the interest rate stabilization account of the bond retirement
25 fund; and

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underscored material = new
[bracketed material] = delete

1 (g) paying accrued interest or funding
2 capitalized interest;

3 (2) enter into additional obligations and
4 other contracts deemed necessary or advisable by the board in
5 connection with any bonds;

6 (3) employ or contract for legal, consulting,
7 underwriting or other services that may be necessary in the
8 judgment of the board for the issuance and sale of the bonds;
9 and

10 (4) in addition to the powers specifically
11 granted in the State Pension Obligation Bonding Act, do all
12 things necessary or convenient to carry out the purposes of
13 that act.

14 B. No member, officer or agent of the board shall
15 be subject to personal liability on any bonds or additional
16 obligations, or for any acts or omissions of board members,
17 officers or agents in carrying out the powers and duties
18 conferred by the State Pension Obligation Bonding Act.

19 Section 5. [NEW MATERIAL] STATE PENSION OBLIGATION BOND
20 RETIREMENT FUND CREATED--MONEY IN THE FUND PLEDGED.--

21 A. The "state pension obligation bond retirement
22 fund" is created in the state treasury as a special fund. The
23 state treasurer shall maintain custody of the bond retirement
24 fund in accordance with the provisions of the State Pension
25 Obligation Bonding Act. A "capitalized interest account" and

1 an "interest rate stabilization account" are hereby created
2 within the bond retirement fund. The bond retirement fund,
3 other than the capitalized interest account and the interest
4 rate stabilization account, shall consist of:

5 (1) net receipts attributable to the gross
6 receipts tax imposed by the Gross Receipts and Compensating Tax
7 Act and distributed to the bond retirement fund pursuant to
8 Section 7-1-6.1 NMSA 1978; and

9 (2) any payments received pursuant to
10 additional obligations.

11 B. A portion of the proceeds of any issuance of
12 bonds may be deposited directly into the capitalized interest
13 account. A portion of the proceeds of any issuance of bonds
14 bearing interest at a variable rate may be deposited directly
15 into the interest rate stabilization account. Earnings of the
16 bond retirement fund shall be credited to the bond retirement
17 fund, and the earnings in each account in the bond retirement
18 fund shall be credited to such account. Balances in the bond
19 retirement fund at the end of any fiscal year shall remain in
20 the bond retirement fund, except as otherwise provided in this
21 section.

22 C. The state does hereby pledge that the bond
23 retirement fund shall be used only for the purposes specified
24 in this section and in Section 6 of the State Pension
25 Obligation Bonding Act. Money in the bond retirement fund is

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1 pledged first to the payment of principal of, interest on and
2 redemption premiums, if any, on all bonds and to the payment of
3 amounts due under any additional obligations. The state
4 further pledges that any law authorizing the distribution of
5 taxes or other revenues to the bond retirement fund or
6 authorizing expenditures from the bond retirement fund shall
7 not be amended or repealed or otherwise modified so as to
8 impair the bonds and the additional obligations to which the
9 bond retirement fund is dedicated, as provided in this section.

10 D. On each June 30, the state treasurer shall
11 transfer to the general fund any balance in the bond retirement
12 fund, other than in the capitalized interest account and the
13 interest rate stabilization account, in excess of the amounts
14 certified and reported to the taxation and revenue department
15 pursuant to Section 6 of the State Pension Obligation Bonding
16 Act.

17 E. Any balance remaining in the bond retirement
18 fund shall be transferred to the general fund at any time upon
19 certification by the board that all bonds have been defeased,
20 that no additional obligations remain and that no additional
21 expenditures from the bond retirement fund are necessary.

22 F. The bonds and the additional obligations shall
23 be special and limited obligations of the state payable solely
24 from the bond retirement fund or, with the approval of the
25 bondholders, such other special funds as may be provided by

1 law, and do not create an obligation or indebtedness of the
2 state or of any retirement system within the meaning of any
3 constitutional provision. No breach of any contractual
4 obligation incurred pursuant to the State Pension Obligation
5 Bonding Act shall impose a pecuniary liability or a charge upon
6 the general credit or taxing power of the state, and neither
7 the bonds nor the additional obligations are general
8 obligations for which the state's full faith and credit is
9 pledged.

10 Section 6. [NEW MATERIAL] BOND PAYMENT PROVISIONS--
11 LEGISLATIVE APPROPRIATION.--

12 A. Upon each delivery of bonds issued pursuant to
13 the State Pension Obligation Bonding Act, the board shall
14 compute, or estimate if necessary, for any bonds that bear
15 interest at a variable rate, and certify to the taxation and
16 revenue department:

17 (1) the total amount of principal of, interest
18 on and premium, if any, on such bonds that will be payable
19 during the term of such bonds;

20 (2) the amount of principal of, interest on
21 and premium, if any, on such bonds that will be payable on each
22 payment date during the then-current and each succeeding fiscal
23 year during the term of such bonds; and

24 (3) the amounts of any fees or other payment
25 scheduled to be paid under any additional obligation during the

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1 term of such bonds.

2 B. Before the last day of each month, for each
3 series of bonds outstanding, the board shall compute or
4 estimate, if necessary, for any bonds that bear interest at a
5 variable rate, certify and report to the taxation and revenue
6 department and, with the approval of the taxation and revenue
7 department, the state treasurer shall transfer from the tax
8 administration suspense fund an amount sufficient to pay the
9 aggregate of:

10 (1) the principal of, interest on and premium,
11 if any, on bonds payable or estimated to be payable by their
12 terms on the next payment date divided by the number of full
13 calendar months between the date of such bonds and the first
14 such payment date, and thereafter, divided by the number of
15 months between each succeeding payment date after the first as
16 any such amount may be adjusted pursuant to any additional
17 obligation; and

18 (2) any amount then due or coming due in the
19 next-succeeding month with respect to any required reserves,
20 the interest rate stabilization fund, costs, expenses and all
21 other amounts incurred by the state under or in connection with
22 the bonds and any additional obligations. Interest for money
23 already deposited in the capitalized interest account of the
24 bond retirement fund shall not be included in the calculation
25 of the amounts to be transferred under this subsection. The

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1 transfer of money described and directed in this subsection is
2 not required if and to the extent that money in the bond
3 retirement fund is more than the amount otherwise to be
4 transferred as provided in this subsection, and if the board
5 notifies the state treasurer of such fact in writing.

6 C. The board may, pursuant to any trust agreement,
7 indenture or resolution relating to bonds that bear interest at
8 a variable rate, provide for the deposit of a portion of bond
9 proceeds in the interest rate stabilization account of the bond
10 retirement fund and the transfer of those amounts to the bond
11 retirement fund in the event that money in the bond retirement
12 fund, other than the capitalized interest account and the
13 interest rate stabilization account, is insufficient on any
14 payment date to pay the interest on such bonds.

15 D. The taxation and revenue department shall, in
16 each month, cause to be distributed, in accordance with Section
17 7-1-6.1 NMSA 1978, to the bond retirement fund net receipts
18 attributable to the gross receipts tax imposed by the Gross
19 Receipts and Compensating Tax Act in the amount reported to the
20 taxation and revenue department pursuant to Subsection B of
21 this section.

22 E. Notwithstanding any other provision of law,
23 there is hereby continuously appropriated, without regard to
24 fiscal years, from the tax administration suspense fund to the
25 bond retirement fund, for the purposes of the State Pension

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1 Obligation Bonding Act, an amount, subject to the limitations
2 of this section, that equals the sum certified monthly by the
3 board pursuant to Subsection B of this section.

4 Section 7. [NEW MATERIAL] BONDS--FORM--EXECUTION.--

5 A. The board, except as otherwise specifically
6 provided in the State Pension Obligation Bonding Act, shall
7 determine at its discretion the terms, covenants and conditions
8 of bonds, including the date to be borne by the bonds;
9 denominations; the time of maturity of any bonds, which
10 maturities may be before or after the term of the unfunded
11 accrued liability to be funded or reimbursed with the proceeds
12 of such bonds, provided that the maturity of any bond does not
13 exceed forty years; rate or rates of interest, which rate or
14 rates may not exceed twelve percent per year of the outstanding
15 principal amount of the bonds, except as otherwise provided by
16 Section 6-14-3 NMSA 1978; redemption features; redemption
17 premiums; registration; refundability; and other terms covering
18 the general and technical aspects of the issuance of the bonds.

19 B. The bonds shall be in such form as the board may
20 determine, and successive issues shall be identified by
21 alphabetical, numerical or other proper series designation.

22 C. The bonds shall be signed and attested by the
23 state treasurer and shall be executed with the facsimile
24 signature of the governor and the facsimile seal of the state,
25 except for bonds issued in book-entry or similar form without

1 the delivery of physical securities. Except for bonds issued
2 in book-entry or similar form without the delivery of physical
3 securities, the Uniform Facsimile Signature of Public Officials
4 Act shall apply, and the board shall determine the manual
5 signature to be affixed on the bonds.

6 Section 8. [NEW MATERIAL] PROCEDURE FOR SALE OF BONDS.--

7 A. Bonds shall be sold by the board at such times
8 and prices and in such manner as the board may elect, either:

9 (1) at private sale to the state or to one or
10 more investment bankers or institutional investors for a
11 negotiated price at, above or below par; or

12 (2) at public sale to the highest bidder for
13 cash at not less than par and accrued interest, in accordance
14 with Subsection B of this section.

15 B. In connection with any public sale of bonds, the
16 board shall publish a notice of the time and place of sale in a
17 newspaper of general circulation in the state and also in a
18 recognized financial journal outside the state. Such
19 publication shall be made once each week for two consecutive
20 weeks prior to the date fixed for such sale, the last
21 publication to be two business days prior to the date of sale.
22 Such notice shall specify the amount, denomination, maturity
23 and description of the bonds to be offered for sale and the
24 place, day and hour at which sealed bids shall be received.
25 All bids, except that of the state, shall be accompanied by a

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1 deposit of an amount determined by the board of at least one
2 percent of the principal amount of the bonds or five hundred
3 thousand dollars (\$500,000), whichever is less, either in the
4 form of a financial surety bond or in cash, or by cashier's
5 check or treasurer's check of, or by certified check drawn on,
6 a solvent commercial bank or trust company in the United
7 States; provided that the financial surety bond or the long-
8 term debt obligations of the issuer or person guarantying the
9 obligations of the issuer of the financial surety bond shall be
10 rated in one of the top two rating categories of a nationally
11 recognized rating agency, without regard to any modification of
12 the rating, and the financial surety bond shall be issued by an
13 insurance company licensed to issue such a bond in New Mexico.
14 Deposits of unsuccessful bidders shall be returned upon
15 rejection of the bid. At the time and place specified in such
16 notice, the board shall open the bids in public and shall award
17 the bonds, or any part thereof, to the bidder or bidders
18 offering the best price. The board may reject any or all bids
19 and readvertise.

20 Section 9. [NEW MATERIAL] STATE PENSION CONTRIBUTION FUND
21 CREATED.--

22 A. The "state pension contribution fund" is hereby
23 created as a special fund within the state treasury. The
24 proceeds of bonds, other than bonds issued to refund prior
25 bonds, less the amounts authorized by the board to be deposited

1 directly into the capitalized interest account and the interest
2 rate stabilization account of the bond retirement fund or
3 otherwise directly paid out for expenses or required reserves
4 pursuant to Section 4 of the State Pension Obligation Bonding
5 Act, shall be deposited in the pension contribution fund.

6 Earnings of the pension contribution fund shall be credited to
7 the pension contribution fund.

8 B. Notwithstanding any other provision of law, all
9 amounts on deposit in the pension contribution fund, other than
10 amounts needed for the payment of any costs related to the
11 issuance of the bonds in accordance with Section 4 of the State
12 Pension Obligation Bonding Act and proceeds of bonds issued to
13 reimburse the state for amounts previously paid with respect to
14 unfunded accrued liability, shall be appropriated to a
15 designated retirement system in an amount proportionate to the
16 portion of the designated retirement system's unfunded accrued
17 liability funded with bond proceeds.

18 C. After payment of any costs related to the
19 issuance of the bonds in accordance with Section 4 of the State
20 Pension Obligation Bonding Act, proceeds of bonds on deposit in
21 the pension contribution fund shall be used as follows:

22 (1) the proceeds of bonds issued to reimburse
23 the state for amounts previously paid with respect to unfunded
24 accrued liability shall be immediately transferred from the
25 pension contribution fund to the general fund or as otherwise

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1 directed by the board; and

2 (2) the proceeds of all other bonds shall be
3 paid by the state treasurer from the pension contribution fund
4 to a designated retirement system in accordance with Subsection
5 D of this section to be applied to the payment, in full or in
6 part, of the unfunded accrued liability under the designated
7 retirement system.

8 D. Within fifteen days after any bond proceeds,
9 other than proceeds of bonds issued to reimburse the state for
10 amounts previously paid with respect to unfunded accrued
11 liability, are deposited into the pension contribution fund,
12 the board shall:

13 (1) allocate those proceeds among the
14 designated retirement systems in proportion to the portion to
15 their respective unfunded accrued liability to be funded with
16 bond proceeds; and

17 (2) certify those allocations to the
18 designated retirement systems and the board. Upon receiving
19 certification of an allocation pursuant to this subsection, a
20 designated retirement system shall submit to the department of
21 finance and administration a voucher for the amount of its
22 allocation. The department of finance and administration shall
23 issue a warrant for disbursement, which shall be paid out of
24 the amount appropriated to that designated retirement system
25 from the pension contribution fund pursuant to this section.

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1 Alternatively, the board and a designated retirement system are
2 authorized to enter into one or more contracts to implement the
3 payment arrangement provided for in this section.

4 Section 10. [NEW MATERIAL] ABATEMENT OF UNFUNDED ACCRUED
5 LIABILITY.--Notwithstanding any other provision of law, if the
6 proceeds of bonds are used to pay all or any portion of
7 unfunded accrued liability to be paid from the general fund,
8 the state treasurer shall abate payment from the general fund
9 to the extent of any payment made from bond proceeds.

10 Section 11. [NEW MATERIAL] FULL AUTHORITY FOR ISSUANCE OF
11 BONDS--BONDS ARE LEGAL INVESTMENTS.--

12 A. The State Pension Obligation Bonding Act shall,
13 without reference to any other act of the legislature, be
14 complete and alternative authorization for the issuance and
15 sale of bonds and to take the actions necessary to implement
16 that act, and shall be regarded as supplemental and additional
17 to the powers conferred by other laws. The issuance of the
18 bonds and their terms, the application of proceeds to the
19 funding or the reimbursement of the payment of unfunded accrued
20 liability or prior bonds and the entering into of any
21 additional obligations need not comply with the requirements of
22 any other law applicable to the issuance of bonds or additional
23 obligations.

24 B. The bonds shall have all the qualities of
25 investment securities under the Uniform Commercial Code and

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1 shall not be invalid for any irregularity or defect or be
2 contestable in the hands of bona fide purchasers or holders
3 thereof for value.

4 C. Bonds are legal investments for any person or
5 board charged with the investment of any public money and are
6 acceptable as security for any deposit of public money.

7 D. The State Pension Obligation Bonding Act, being
8 necessary for the welfare of the state and its inhabitants,
9 shall be liberally construed to effect the purpose thereof.

10 Section 12. [NEW MATERIAL] SUIT TO COMPEL PERFORMANCE OF
11 OFFICERS.--Any holder of bonds or any person or officer being a
12 party in interest may sue to enforce and compel the performance
13 of the provisions of the State Pension Obligation Bonding Act.

14 Section 13. [NEW MATERIAL] STATE PENSION OBLIGATION TAX
15 REVENUE BONDS TAX-EXEMPT.--All bonds shall be exempt from
16 taxation by the state or any of its political subdivisions.

17 Section 14. A new section of the Tax Administration Act
18 is enacted to read:

19 "[NEW MATERIAL] DISTRIBUTION--STATE PENSION OBLIGATION
20 BOND RETIREMENT FUND--GROSS RECEIPTS TAX.--A distribution
21 pursuant to Section 7-1-6.1 NMSA 1978 shall be made to the
22 state pension obligation bond retirement fund in the amounts
23 designated pursuant to Section 6 of the State Pension
24 Obligation Bonding Act from the net receipts attributable to
25 the gross receipts tax imposed by the Gross Receipts and

1 Compensating Tax Act. The distribution shall be made:

2 A. after the required distribution pursuant to
3 Section 7-1-6.4 NMSA 1978;

4 B. contemporaneously with other distributions of
5 net receipts attributable to the gross receipts tax for payment
6 of debt service on outstanding bonds or to a fund dedicated for
7 that purpose; and

8 C. prior to any other distribution of net receipts
9 attributable to the gross receipts tax."

10 Section 15. EMERGENCY.--It is necessary for the public
11 peace, health and safety that this act take effect immediately.